Laro Service Systems, Inc. *and* Local 32BJ, Service Employees International Union. Case 2–CA–39481

November 22, 2010

DECISION AND ORDER

BY CHAIRMAN LIEBMAN AND MEMBERS BECKER AND HAYES

The Acting General Counsel seeks a default judgment in this case on the ground that the Respondent has failed to file an answer to the complaint. Upon a charge filed on September 10, 2009, and an amended charge filed on November 6, 2009, by Local 32BJ, Service Employees International Union, the Union, the Acting General Counsel issued a complaint on June 29, 2010, against Laro Service Systems, Inc., the Respondent, alleging that it violated Section 8(a)(5) and (1) of the Act. The Respondent failed to file an answer.

On September 7, 2010, the Acting General Counsel filed a Petition for Summary Judgment with the Board. On September 14, 2010, the Board issued an order construing the petition as a motion for default judgment, transferring the proceeding to the Board, and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Default Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in a complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively stated that unless an answer was received on or before July 13, 2010, the Board may find, pursuant to a motion for default judgment, that the allegations in the complaint are true.[1] Further, the undisputed allegations in the motion for default judgment disclose that the Region, by certified letter dated July 30, 2010, notified the Respondent that unless an answer was received by August 13, 2010, a motion for default judgment would be filed with the Board.

In the absence of good cause being shown for the failure to file an answer, we grant the Acting General Counsel's Motion for Default Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a New York corporation, with an office and place of business located at 271 Skip Lane, Bay Shore, New York, has been engaged in the business of providing maintenance services to commercial clients throughout the New York area.

Annually, in the course and conduct of its business operations described above, the Respondent purchases and receives at its New York, New York facility products, goods, and materials valued in excess of $50,000 directly from points located outside the State of New York.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, the Respondent has been a constituent member of the Realty Advisory Board on Labor Relations, Inc., a multiemployer bargaining association.

At all material times, Robert Bertuglia has been the chief executive officer and a supervisor of the Respondent within the meaning of Section 2(11) of the Act, and an agent acting on its behalf.

The following employees of the Respondent, the unit, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All service employees [employed by the Respondent] in any facility, including residential buildings, in the City of New York and in such other areas that are currently within the geographical jurisdiction of the Union and the RAB.

The most recent collective-bargaining agreement between the Union and the Respondent is effective by its terms January 1, 2008, through December 31, 2011.

At all material times, pursuant to Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the bargaining unit.

[1] By letter dated July 26, 2010, the Respondent's former counsel stated that the Respondent has been out of business for over 1 year and that any assets at the time of its closing have been seized by Signature Bank. Respondent's former counsel further stated that because the Respondent would not be able to continue paying him legal fees, he would not continue to represent the Respondent in this matter. It is well established that neither financial insolvency nor cessation of operations relieves a respondent of its obligation to file an answer. See *OK Toilet & Towel Supply*, 339 NLRB 1100, 1100–1101 (2003); *Valiant Metal Products*, 244 NLRB 1049 (1979).

Since about August 14, 2009, the Union, by its grievance representative, Edith Villavicencio, has requested that the Respondent furnish it with the following information:

> (1) for Jose L. Jimenez: payroll records from December 1, 2008 through August 7, 2009 and evidence of his hours worked and pay rate received and retail store location where he was employed;
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> (2) for John Gallagher: payroll records from May 1, 2005 through December 31, 2008 and other evidence of his hours worked and rate of pay received;
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> (3) for Carmen Fernandez: payroll records from January 1, 2008 through March 31, 2009; and
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> (4) for Evelyn Gonzalez: payroll records from January 1, 2008 through March 31, 2009.

Since about September 1, 2009, the Union, by its counsel, Katchen Locke, has requested that the Respondent furnish the Union with the following information:

> (1) for each shareholder of the Respondent: their name, business address and phone number, home address and phone number and percentage of ownership in the Respondent;
>
> (2) a list and description of the Employer's assets, sources thereof and address where they are located; and
>
> (3) payroll records and dates of hire for the following employees: Carmen Fernandez, Evelyn Gonzalez, John Gallagher and Jose L. Jimenez.

The information requested by the Union is necessary for, and relevant to, the Union's performance of its duties as the exclusive collective-bargaining representative of the unit.

Since about August 15, 2009, the Respondent has failed and refused to furnish the Union with the information requested on August 14, 2009, and since about September 1, 2009, the Respondent has failed and refused to furnish the Union with the information requested on September 1, 2009.

CONCLUSION OF LAW

By failing and refusing to furnish the Union with the information it requested, the Respondent has failed and refused to bargain collectively and in good faith with the Union as the exclusive collective-bargaining representative of its employees and, therefore, has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) of the Act and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(5) and (1) by failing and refusing to furnish the Union with information that is necessary for and relevant to its performance of its duties as the exclusive collective-bargaining representative of the Respondent's employees, we shall order the Respondent to furnish the Union with the information it requested about August 14, 2009, and September 1, 2009.

ORDER

The National Labor Relations Board orders that the Respondent, Laro Service Systems, Inc., Bay Shore, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain collectively and in good faith with Local 32BJ, Service Employees International Union, by failing and refusing to furnish the Union with information that is necessary for and relevant to the performance of its duties as the exclusive collective-bargaining representative of the employees in the following appropriate bargaining unit:

> All service employees [employed by the Respondent] in any facility, including residential buildings, in the City of New York and in such other areas that are currently within the geographical jurisdiction of the Union and the RAB.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Furnish the Union with the information it requested about August 14, 2009, and September 1, 2009.

(b) Within 14 days after service by the Region, post at its Bay Shore, New York facility copies of the attached notice marked "Appendix."[2] Copies of the notice, on forms provided by the Regional Director for Region 2, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are cus-

[2] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

tomarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means.[3] Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since August 15, 2009.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. November 22, 2010

Wilma B. Liebman, Chairman

Craig Becker, Member

Brian E. Hayes, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

[3] For the reasons stated in his dissenting opinion in *J. Picini Flooring*, 356 NLRB No. 9 (2010), Member Hayes would not require electronic distribution of the notice.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to bargain collectively and in good faith with Local 32BJ, Service Employees International Union, by failing and refusing to furnish the Union with information necessary for and relevant to the performance of its duties as the exclusive collective-bargaining representative of the employees in the following appropriate bargaining unit:

All service employees employed by us in any facility, including residential buildings, in the City of New York and in such other areas that are currently within the geographical jurisdiction of the Union and the RAB.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL furnish the Union the information it requested about August 14, 2009, and September 1, 2009.

LARO SERVICE SYSTEMS, INC.